

NO. PD-1061-19

FILED
COURT OF CRIMINAL APPEALS
10/31/2019
DEANA WILLIAMSON, CLERK

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

STATE OF TEXAS,
Petitioner,

v.

ORLANDO ORTIZ,
Respondent.

RESPONDENT'S MOTION FOR RELEASE ON BOND

TO THE COURT OF CRIMINAL APPEALS OF TEXAS:

NOW COMES ORLANDO ORTIZ (TDCJ #____), by and through the undersigned appointed counsel, and files this Motion for Release on Bail, and states as follows:

I.

1. Ortiz was acquitted of two counts of sexual assault, but convicted of the third-degree felony offense of assault family violence by occlusion in District Court. Ortiz was sentenced to 40 years in prison. Ortiz timely perfected his appeal to the 4th Court of Appeals. The 4th Court of Appeals reversed the District Court's conviction on assault by

occlusion. Following the reversal, the State, through the State Prosecuting Attorney's Office, filed a Petition for Discretionary Review.

II.

2. Code of Criminal Procedure, Article 44.04(h) provides in pertinent part:

If a conviction is reversed by a decision of a Court of Appeals, the defendant, if in custody, is entitled to release on reasonable bail, regardless of the length of term of imprisonment, pending final determination of an appeal by the state or the defendant on a motion for discretionary review. . . If the defendant requests bail after a petition for discretionary review has been filed, the Court of Criminal Appeals shall determine the amount of bail. The sureties on the bail must be approved by the court where the trial was had. The defendant's right to release under this subsection attaches immediately on the issuance of the Court of Appeals' final ruling as defined by Tex.Cr.App.R. 209(c).

Tex. Code Crim. Proc. Ann. art. 44.04(h).

3. The Fourteenth Court of Appeals in *Taylor v. State*, found that a defendant, whose conviction was reversed, was entitled to reasonable bail pending the State's petition for discretionary review based on Article 44.04(h). *Taylor v. State*, 564 S.W.3d 501, 503 (Tex. App.—Houston [14th Dist.] 2018). As in *Taylor*, the judgment of conviction under which Respondent has been confined, will disappear if the 4th Court of Appeals ruling stands, so a bond is necessary. *Id* at 503. The First Court of Appeals in *Tissier v. Kegans*, applied 44.04(h) to determine that the defendant was entitled to release on reasonable bail following a reversal of a conviction. *Tissier v. Kegans*, 789 S.W.2d 680, 681 (Tex. App. - Houston [1st Dist.] 1990, no writ).

4. Respondent has shown his entitlement to bail under article 44.04(h), and therefore, should not be denied bail.

III.

5. The primary purpose of setting bail, both pretrial and post-appeal, is to secure the presence of the accused. *Aviles v. State*, 26 S.W.3d 696, 698 (Tex. App.-- Houston [14th Dist.] 2000).

6. Code of Criminal Procedure, Article 17.15 provides a list of factors to be considered when setting bail:

(1) The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with; (2) the power to require bail is not to be so used as to make it an instrument of oppression; (3) the nature of the offense and the circumstances under which it was committed are to be considered; (4) the ability to make bail is to be regarded, and proof may be taken upon this point; (5) the future safety of a victim of the alleged offense and the community shall be considered.

Tex. Code Crim. Proc. Ann. art. 17.15. The Court should also look to additional factors such as (1) defendant's work record, (2) defendant's family and community ties, (3) defendant's length of residency, (4) defendant's prior criminal record, (5) defendant's conformity with previous bond, (6) existence of other outstanding bonds, and (7) aggravating circumstances alleged to have been involved in the charged offense. *Aviles*, 26 S.W.3d at 698, (citing *Ex Parte Rubaco*, 611 S.W.2d 848, 849-50 (Tex. Crim. App. 1981)).

7. Following the reversal and remand in the Court of Appeals, the primary factors in setting bail to be considered by the appellate court are (1) the fact that the conviction has been overturned, (2) the state's ability, if any, to retry the appellant, and (3) the likelihood that the decision of the Court of Appeals will be overturned. *Aviles*, 26 S.W.3d at 699.

8. The District Court's decision on bail can guide the appellate court in considering the *Aviles* factors. *Taylor*, 564 S.W.3d at 505. Respondent here was charged with two

counts of sexual assault – for which he was acquitted on both at trial – and one count of assault family violence by occlusion, for which Respondent’s conviction has been overturned by the Fourth Court of Appeals. The District Court granted Respondent bail for all three original counts in the amount of \$60,000.00. Respondent has no prior history showing his inability to comply with the Court and has appeared when requested to appear. Respondent’s mother and other family members reside in La Salle County, Texas and would not pose an unreasonable flight risk given the single count which would remain if this Court were to overturn his conviction.

9. Considering the totality of the circumstances, Respondent requests this Honorable Court to be admitted to reasonable bail in the amount no more than \$5,000.00.

IV.

WHEREFORE, premises considered, Respondent Orlando Ortiz prays this Court set reasonable bail pending disposition of the State’s Petition for Discretionary Review, and for such other relief to which Respondent is entitled.

RESPECTFULLY SUBMITTED,

/S/ NOHL BRYANT

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CERTIFICATE OF COMPLIANCE

I certify that this Motion has 930 words according to the word count feature in Microsoft Word.

/S/ NOHL BRYANT

Nohl Bryant
Texas Bar No. 24050346

CERTIFICATE OF SERVICE

I certify that this Motion has been sent on October 30, 2019, via e-service to all counsel of record.

/S/ NOHL BRYANT

Nohl Bryant
Texas Bar No. 24050346